



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board North Coast Region

William R. Massey, Chairman

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Arnold
Schwarzenegger
Governor

September 25, 2006

Mr. Douglas Lumgair
Windsor Oaks Association
P.O. Box 883
Windsor, CA 95492

Dear Mr. Lumgair:

Subject: Issuance of an After the Fact Clean Water Act Section 401 Water Quality
Certification for the Windsor Oaks Restoration Project
also
Rescission of Cleanup and Abatement Order No. R1-2004-0077

File: Windsor Oaks Association, LP, Windsor Oaks Restoration Project,
Sonoma County, WDID No. 1B06130WNSO

This Order by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), is being issued pursuant to Section 401 of the Clean Water Act (33 USC 1341). On September 11, 2006, the Regional Water Board received an application from Mr. Douglas Lumgair, on behalf of Windsor Oaks Association, LP (Applicant), requesting a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) for the Windsor Oaks Restoration Project (Project), located in Windsor, Sonoma County. On September 1, 2006, the Regional Water Board received a \$500.00 processing fee.

On February 28, 2004, Regional Water Board staff met with Mr. Lumgair of Windsor Oaks Association and conducted an inspection of the Windsor Oaks Vineyards site, in response to a referral from Mr. Kevin Doble of the Sonoma County Permit and Resource Management Department. Staff determined that grading within Waters of the State and Waters of the United States had occurred at the site, without required permits, resulting in fill placement and grading of approximately 0.21 acres of seasonal wetlands, swales and streams. On August 25, 2004, the Executive Officer of the Regional Water Board issued Cleanup and Abatement Order No. R1-2004-0077 (CAO) that required the Applicant to submit an application for a 401 Water Quality Certification and a mitigation plan. The Applicant has complied with the CAO and this Order rescinds the CAO.

California Environmental Protection Agency

Recycled Paper

Information describing the Project was noticed for public comment on the Regional Water Board's website on September 22, 2006. Under Title 23, California Code of Regulations, Section 3858(a): "The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of certification." Due to the urgent nature of the Project and the need to perform the restoration and mitigation as soon as possible, this Order is being issued within the 21-day public comment period. Public comments will still be accepted and reviewed during the entire 21-day comment period; and the Order may be modified.

The Project caused permanent impacts to Waters of the United States tributary to Starr Creek in the Mark West Hydrologic Sub Area No. 114.23, and the Russian River Hydrologic Unit No. 114.00.

Project Description: The purpose of the Project is to mitigate for filling and grading activities within Waters of the United States that already occurred at the Windsor Oaks Vineyard located at 10810 Hillview Road in Windsor, Sonoma County.

On April 14, 2006, the Applicant submitted a revised Mitigation and Monitoring Plan that proposed on-site mitigation for the lost functions and value of jurisdictional Waters of the United States impacted at multiple sites on the property. The plan also provided mitigation for temporal losses of habitat function and values. The plan proposed three forms of mitigation on site: restoration of prior habitat, creation of in-kind replacement habitat and enhancement of existing habitat.

Previous grading activities resulted in fill placement in, and grading of approximately 0.21 acres of seasonal wetland and ephemeral stream habitat.

Receiving Water: Seasonal wetlands and streams tributary to Starr Creek in the Mark West Hydrologic Sub Area No. 114.23, and the Russian River Hydrologic Unit No. 114.00

Federal Permit: Pending U.S. Army Corps of Engineers Individual 404 Permit

State and Local

Approvals: California Department of Fish and Game has been notified and may issue an after-the-fact permit

Filled or

Excavated Area: Total Area Impacted: 0.21 acres of seasonal wetland and stream habitat
Area Temporarily Impacted: 0.00 acres
Area Permanently Impacted: 0.21 acres

Compensatory
Mitigation:

A revised Mitigation and Monitoring Plan (MMP) was submitted to the Regional Water Board on April 14, 2006. The MMP includes creation of 4,050 square feet of seasonal wetland, creation of 400 linear feet of swale habitat, and restoration of 800 feet of swale habitat at the site designated as Block 1 in the MMP. Within Block 6, 100 linear feet of wetland shall be enhanced with the planting of native trees and shrubs. Within Block 7, 400 linear feet of ephemeral stream channel shall be restored including the removal of fill and a culvert and grading to repair the stream to its original topography and hydrology. The stream will then be protected with erosion control fabric and planted with native grasses, shrubs and trees. An estimated 36,100 cubic yards of fill will be removed from Waters of the United States in Block 7 and used on site. Mitigation in Block 8 shall include enhancement of 800 linear feet of ephemeral stream channel by planting native trees and shrubs. The Applicant shall also dedicate a 0.36 acre on-site freshwater pond to the existing open space easement area and remove barrier fencing that reduces wildlife migration within some areas of the site.

The Project shall be monitored in accordance with the MMP and as follows: woody plants for 10 years, herbaceous wetland plants for five years, and seeded native grasses for three years.

Failure to implement the mitigation as described in the MMP will be considered a violation of this Order, and is subject to Regional Water Board enforcement actions.

Non-compensatory
Mitigation:

Non-compensatory mitigation measures include the use of erosion control Best Management Practices (BMPs) to prevent erosion and sediment discharges. All exposed soil shall be permanently stabilized at the earliest practicable date.

CEQA

Compliance: The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project is categorically exempt under Class 15308 for actions by regulatory agencies for protection of the environment.

Standard

Conditions: Pursuant to Title 23, California Code of Regulations, Section 3860 (23 CCR 3860), the following three standard conditions shall apply to this project:

- 1) This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations (CCR 23) 23 CCR 3867.
- 2) This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23 and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- 3) This certification is conditioned upon total payment of any fee required under Chapter 28, CCR 23 and owed by the Applicant.

Additional

Conditions: Pursuant to 23 CCR 3859(a), the Applicant shall comply with the following additional conditions:

- 1) The Regional Water Board shall be notified in writing at least five working days (working days are Monday – Friday) prior to the start of the Project, with details regarding the construction schedule, in order to allow staff to be present on-site during construction, and to answer any public inquiries that may arise.
- 2) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or

other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into Waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream, Waters of the State or Waters of the United States.

- 3) BMPs for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
- 4) All fill material used on the site shall be clean and free of contaminants. A characterization report for all imported fill materials shall be provided to the Regional Water Board prior to the commencement of fill work.
- 5) A copy of this Order shall be provided to the contractor and all subcontractors conducting the work, and shall be in their possession at the work site.
- 6) If, at any time, a discharge to surface waters occurs, or any water quality problem arises, the Project shall cease immediately and the Regional Water Board shall be notified promptly.
- 7) The Project shall be conducted as described in this Order and in the application submitted by the Applicant. The compensatory mitigation including monitoring shall be completed as described in the MMP. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
- 8) This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the project as described in this Order.

- 9) The Applicant shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance. The Applicant shall also provide photos of the completed work areas after the first significant rainfall event in order to ensure that erosion control has been successful.

Water Quality
Certification:

I hereby rescind Cleanup and Abatement Order No. R1-2004-0077 and issue an Order [23 CCR Subsection 3831(e)] certifying that the authorized discharge from the Windsor Oaks Restoration Project (WDID No. 1B06130WNSO) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act [33 USC Subsection 1341 (a)(1)] , and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017- DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification (Enclosed).

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

Expiration: The authorization of this Order for any dredge and fill activities expires on October 15, 2011. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please notify Mona Dougherty at (707) 570-3761 and in writing prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,



Catherine E. Kuhlman
Executive Officer

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Enclosure: State Water Resources Control Board Order No. 2003-0017-DWQ,
General Waste Discharge Requirements for Dredge and Fill Discharges
That Have Received State Water Quality Certification.

cc: Mr. Oscar Balaguer, SWRCB, 401 Program Manager
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